

**STATE OF NEW YORK
SUPREME COURT: COUNTY OF ERIE**

AB 505 DOE,

Plaintiff,

v.

THE PARK SCHOOL BOARD OF
TRUSTEES; THE PARK SCHOOL OF
BUFFALO AKA THE PARK SCHOOL,

Defendant(s).

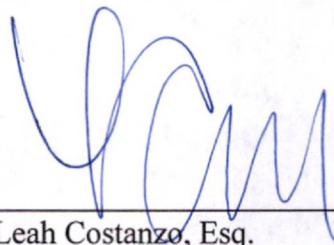
Index No.

SUMMONS

TO THE ABOVE NAMED DEFENDANT(S):

PLEASE TAKE NOTICE THAT YOU ARE HEREBY SUMMONED to answer the Complaint, a copy of which is hereby served upon you, and to serve a copy of your Answer to the Complaint upon the undersigned attorneys listed below within twenty (20) days after the service of this Summons, exclusive of the day of service (or within thirty (30) days after the service is complete if this Summons is not personally delivered to you within the State of New York); and in the case of your failure to appear or answer, judgment by default will be taken against you for the relief demanded herein.

Dated: November 15, 2019



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COMPLAINT

DEMAND FOR JURY TRIAL¹

Plaintiff, by and through Plaintiff's attorneys, states and alleges as follows:

PSEUDONYM

1. Plaintiff is authorized to file the instant action under a pseudonym and defendants are barred from disclosing Petitioner's true identity to the general public pursuant to an Amended Order of the Honorable Deborah A. Chimes, J.S.C. dated August 13, 2018 which is attached hereto.

PARTIES

2. At all times material to this Complaint, Plaintiff resided in the State of New York.

3. Whenever reference is made to any Defendant entity, such reference includes that entity, affiliates, predecessors, and successors. In addition, whenever reference is made to any act, deed, or transaction of any entity, the allegation means that the entity engaged in the act, deed, or transaction by or through its officers, directors, agents, employees, or representatives while they were actively engaged in the management, direction, control, or transaction of the entity's business or affairs.

¹ Pursuant to §4 of the New York Child Victims Act, Plaintiff is entitled to a trial preference.

4. At all times material, Defendant The Park School Board of Trustees ("Board of Trustees") is a self-perpetuating governing body located in the County of Erie and State of New York.

5. At all times material, The Park School of Buffalo aka The Park School ("The Park School") was and continues to be a private, co-educational, college preparatory school located in the County of Erie and State of New York.

6. At all times material, Leonard (Tom) D. Adkins, Jr. ("Adkins") was an employee and/or agent of Defendants.

JURISDICTION

7. This Court has jurisdiction over Defendants pursuant to C.P.L.R. § 301.

8. Venue is proper pursuant to C.P.L.R. § 503 in that Defendants are situated in Erie County.

9. This complaint is brought under the Child Victims Act and, as such, the filing of a Notice of Claim is not required.

FACTS

10. At all times material, Adkins was employed and/or an agent of Defendants and remained under the direct supervision, employ, and control of Defendants.

11. Defendants placed Adkins in positions where he had access to and worked with children as an integral part of his work. Specifically, Defendants placed and retained Adkins at The Park School as an English teacher.

12. At all times material, Plaintiff was a student at The Park School.

13. Plaintiff, as a minor and vulnerable child, was dependent on Defendants and Adkins. Defendants and Adkins had custody of Plaintiff and was entrusted with the safety of Plaintiff and, therefore, had responsibility for and authority over Plaintiff.

14. In approximately 1980, when Plaintiff was approximately 17 years old, Adkins engage in unconsented sexual contact with Plaintiff.

15. Defendants knew or should have known that Adkins was a danger to children before Adkins sexually assaulted Plaintiff.

16. Prior to the sexual abuse of Plaintiff, Defendants learned or should have learned that Adkins was not fit to work with children. Defendants, by and through their agents, servants and/or employees, became aware, or should have become aware of Adkins's propensity to commit sexual abuse and of the risk to Plaintiff's safety. At the very least, Defendants knew or should have known that they did not have sufficient information about whether or not its employees, more specifically, Adkins, were fit to work with children.

17. Defendants knew or should have known that there was a risk of the sexual abuse of children attending The Park School. At the very least, Defendants knew or should have known that they did not have sufficient information about whether or not there was a risk of child sex abuse for children attending The Park School.

18. Instead, Defendants negligently deemed that Adkins was fit to work with children and/or that any previous misconduct was fixed or cured and/or that Adkins would not sexually assault children and/or that Adkins would not injure children.

19. Defendants owed Plaintiff a duty of reasonable care because they had superior knowledge about the risk that Adkins posed to Plaintiff, the risk of abuse in general in its schools and/or the risks that its facilities posed to minor children.

20. Defendants owed a duty to Plaintiff to protect Plaintiff from harm because Defendants' actions created a foreseeable risk of harm to Plaintiff. As a vulnerable child attending The Park School, Plaintiff was a foreseeable victim. As a vulnerable child who Adkins had access to through Adkins's employment with Defendants, Plaintiff was a foreseeable victim.

21. Defendants also breached its duty to Plaintiff by actively maintaining and employing Adkins in a position of power and authority through which Adkins had access to children, including Plaintiff, and power and control over children, including Plaintiff.

22. Defendants breached its duties to Plaintiff. Defendants failed to use ordinary care in determining whether its facilities were safe and/or determining whether it had sufficient information to represent its facilities as safe. Defendants' breach of its duties include, but are not limited to: failure to protect Plaintiff from a known danger, or reasonably foreseeable failure to have sufficient policies and procedures to prevent child sex abuse, failure to properly implement policies and procedures to prevent child sex abuse, failure to take reasonable measures to make sure that policies and procedures to prevent child sex abuse were working, failure to adequately inform families and children of the risks of child sex abuse, failure to investigate risks of child sex abuse, failure to have any outside agency test its safety procedures, failure to protect the children attending its programs from child sex abuse, failure to adhere to the applicable standard of care for child safety, failure to investigate the amount and type of information necessary to represent the school and its employees as safe, failure to train its employees properly to identify signs of child sexual abuse by fellow employees, and failure to engage or timely engage certified mental health professionals.

23. Defendants also breached its duty to Plaintiff by failing to warn Plaintiff and Plaintiff's family of the risk that Adkins posed. Defendants further failed to warn Plaintiff and Plaintiff's family of Defendants' knowledge of the occurrence of child sexual abuse.

24. Defendants and/or its other agents violated their legal duty by failing to report known and/or suspected abuse of children by Adkins to law enforcement.

25. As a direct result of Defendants' negligence, Plaintiff has suffered, and will continue to suffer, great pain of mind and body, severe and permanent emotional distress, physical manifestations of emotional distress, embarrassment, loss of self-esteem, humiliation and/or physical, personal and psychological injuries. Plaintiff was prevented, and will continue to be prevented, from performing normal daily activities and obtaining the full enjoyment of life; and/or has incurred and will continue to incur expenses for psychological treatment, therapy, and counseling, and, on information and belief has and/or will incur loss of income and/or loss of earning capacity.

AS AND FOR A FIRST CAUSE OF ACTION:
NEGLIGENCE

26. Plaintiff incorporates all consistent paragraphs of this Complaint as if fully set forth under this count.

27. Defendants owed Plaintiff a duty of reasonable care to protect the Plaintiff from injury.

28. Defendants owed Plaintiff a duty of reasonable care because Defendants had a special relationship with Plaintiff.

29. Defendants also had a duty arising from its special relationship with Plaintiff, Plaintiff's parents, and other parents of young, vulnerable children, to properly train and supervise

its employees. Defendants had a duty to establish measures of protection not necessary for persons who are older or better able to safeguard themselves.

30. By representing Adkins as safe to work with children, and by undertaking the custody and supervision of the minor Plaintiff, Defendants had a fiduciary relationship with the minor Plaintiff. As a result of Plaintiff being a minor, and by Defendants' undertaking of the care and guidance of then vulnerable minor Plaintiff, Defendants held a position of empowerment over Plaintiff.

31. Defendants had an *in loco parentis* relationship with Plaintiff and owed Plaintiff a duty to protect Plaintiff from injury.

32. By establishing, operating and/or administrating The Park School, accepting the minor Plaintiff as a participant in its programs, holding its facilities and programs out to be a safe environment for Plaintiff, accepting custody of the minor Plaintiff *in loco parentis*, and by virtue of its fiduciary relationship with Plaintiff, Defendants entered into an express and/or implied duty to properly supervise Plaintiff and provide a reasonably safe environment for children attending its schools.

33. By establishing and operating The Park School and by accepting the enrollment and participation of the minor Plaintiff in its educational programs, Defendants owed Plaintiff a duty to properly supervise Plaintiff to prevent harm from generally foreseeable dangers. Defendants had the duty to exercise the same degree of care over minor students under its control as a reasonably prudent parent would have exercised under similar circumstances.

34. Defendants owed Plaintiff a duty to protect Plaintiff from harm because Defendants were aware of Plaintiff's presence on its property and aware that Adkins posed a danger on Defendants' property.

35. Defendants breached its duties to Plaintiff by failing to use reasonable care. Defendants' failures include, but are not limited to, failing to properly supervise Adkins, failing to properly supervise Plaintiff and failing to protect Plaintiff from a known danger.

36. As a direct result of the foregoing, Plaintiff sustained physical, emotional, and psychological injuries, along with pain and suffering.

AS AND FOR A SECOND CAUSE OF ACTION:
NEGLIGENT HIRING

37. Plaintiff incorporates all consistent paragraphs of this Complaint as if fully set forth under this court.

38. At all times material, Adkins was employed by Defendants were under Defendants' direct supervision, employ and control when he/she committed the wrongful acts alleged herein. Adkins engaged in the illegal conduct while acting in the course and scope of his employment with Defendants and/or accomplished the sexual abuse by virtue of his/her job-created authority.

39. Defendants negligently hired and/or negligently placed Adkins in a position to cause foreseeable harm which Plaintiff would not have been subject to had Defendants taken reasonable care in its pre-hiring investigation of Adkins.

40. Defendants knew or should have known of Adkins's propensity for the type of behavior which resulted in Plaintiff's injuries.

41. As a result of the foregoing, Plaintiff sustained physical, emotional and psychological injuries, along with pain and suffering.

AS AND FOR A THIRD CAUSE OF ACTION:
NEGLIGENT TRAINING AND SUPERVISION

42. Plaintiff incorporates all consistent paragraphs of this Complaint as if fully set forth under this count.

43. At all times material, Adkins was employed by Defendants and was under Defendants' direct supervision, employ, and control when he committed the wrongful acts alleged herein. Adkins engaged in the wrongful conduct while acting in the course and scope of his employment with Defendants and/or accomplished the sexual abuse by virtue of his job-created authority.

44. Defendants had a duty, arising from its employment of Adkins, to ensure that Adkins did not sexually abuse children.

45. Further, Defendants had a duty to train and educate employees and administrators and establish adequate and effective policies and procedures calculated to detect, prevent, and address inappropriate behavior and conduct between its employees and children.

46. Defendants were negligent in the training, supervision, and instruction of its employees. Defendants failed to timely and properly educate, train, supervise, and/or monitor its agents or employees with regard to policies and procedures that should be followed when sexual abuse of a child is suspected or observed.

47. Defendants were additionally negligent in failing to supervise, monitor, chaperone, and/or investigate Adkins and/or in failing to create, institute, and/or enforce rules, policies, procedures, and/or regulations to prevent Adkins's sexual abuse of Plaintiff.

48. Defendants further failed to establish policies, procedures, training, manuals and other instructive materials and failed to publish such materials to all employees and administrators.

49. As a direct result of the foregoing, Plaintiff sustained physical, emotional, and psychological injuries, along with pain and suffering.

AS AND FOR A FOURTH CAUSE OF ACTION:
NEGLIGENT RETENTION

50. Plaintiff incorporates all consistent paragraphs of this Complaint as if fully set forth under this count.

51. Defendants became aware or should have become aware of Adkins's propensity for child sexual abuse, and failed to take any further action to remedy the problem and failed to investigate or remove Adkins from working with children.

52. Defendants negligently and/or recklessly retained Adkins with knowledge of Adkins's propensity for the type of behavior which resulted in Plaintiff's injuries in this action.

53. Defendants negligently and/or recklessly retained Adkins in a position where he had access to children and could foreseeably cause harm which Plaintiff would not have been subjected to had Defendants acted reasonably.

54. In failing to timely remove Adkins from working with children or terminate the employment of Adkins, Defendants negligently and/or recklessly failed to exercise the degree of care that a reasonably prudent parent would have exercised under similar circumstances, and created an increased risk of future harm.

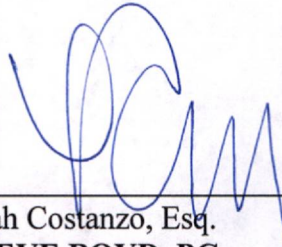
55. As a direct result of the foregoing, Plaintiff sustained physical, emotional, and psychological injuries, along with pain and suffering.

PRAYER FOR RELIEF

WHEREFORE, based on the foregoing causes of action, Plaintiff prays for judgment against Defendant(s) in an amount that will fully and fairly compensate Plaintiff for Plaintiff's injuries and damages, and for any other relief the Court deems appropriate. The amount of damages

sought in this Complaint exceeds the jurisdictional limits of all lower courts which would otherwise have jurisdiction.

DATED: November 15, 2019.



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